

**To:** Maier, Brent[Maier.Brent@epa.gov]  
**Cc:** Kermish, Laurie[Kermish.Laurie@epa.gov]; Hagler, Tom[Hagler.Tom@epa.gov]; Kemmerer, John[KEMMERER.JOHN@EPA.GOV]  
**From:** Vendlinski, Tim  
**Sent:** Tue 11/3/2015 8:17:01 PM  
**Subject:** FW: Rep. Jim Costa - Information Request: CWA Suit  
2015-10-29 LTR.Enviro groups to EPA re 60-day notice for suit under CWA.pdf

Hi Brent:

I'm closing the loop with you based on my conversations today with Laurie and Tom H. during our weekly Bay Delta meeting.

Laurie's reaction was consistent with mine from yesterday when I suggested EPA's response to this and all other inquiries should be, "We are studying the 60-day notice, and discussing it internally."

It will take a while to have all the necessary cross-program conversations within Region 9 and between the Region and the various offices at HQ.

We agreed it would be best for you to circle back with Mr. Petersen to provide him with our standard response.

Thanks, Tim

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Tim Vendlinski

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**From:** Maier, Brent

**Sent:** Monday, November 02, 2015 2:01 PM

**To:** Vendlinski, Tim <vendlinski.tim@epa.gov>; Hagler, Tom <Hagler.Tom@epa.gov>; Berg, Elizabeth <Berg.Elizabeth@epa.gov>; Hashimoto, Janet <Hashimoto.Janet@epa.gov>; Kemmerer, John <KEMMERER.JOHN@EPA.GOV>

**Cc:** Rao, Kate <Rao.kate@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>; Keener, Bill <Keener.Bill@epa.gov>; Zito, Kelly <ZITO.KELLY@EPA.GOV>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Borum, Denis <Borum.Denis@epa.gov>

**Subject:** Rep. Jim Costa - Information Request: CWA Suit

**Importance:** High

All -

Please see attached inquiry from Congressman Jim Costa's Deputy Chief of Staff.  
**Please let me know how you would suggest we respond to his request to review and provide him with a general sense of what EPA has done regarding the allegations by the NGOs.** Thanks.

In addition to what Scott Peterson provided below, I also saw the following link on Maven's Notebook with some additional information about the 60-day notice filing.

<http://mavensnotebook.com/2015/11/02/environmental-groups-notify-epa-of-intent-to-file-suit-for-violations-of-the-clean-water-act/>

Brent Maier

Congressional Liaison

U.S. Environmental Protection Agency, Region IX

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Ph: 415.947.4256

**From:** Petersen, Scott [<mailto:Scott.Petersen@mail.house.gov>]

**Sent:** Monday, November 02, 2015 1:50 PM

**To:** Maier, Brent <[Maier.Brent@epa.gov](mailto:Maier.Brent@epa.gov)>

**Subject:** Information Request: CWA Suit

Good afternoon Brent,

Attached you'll find a letter sent to EPA regarding a 60-day notice filed by several environmental NGO's and their intent to challenge the EPA regarding its oversight of the State Water Resources Control Boards actions during the drought conditions. You'll also find a blog post by Kate Poole, from the Natural Resources Defense Council, related to the same topic. Can you please review and provide me a general sense of what EPA has done regarding the allegations of the NGO's? Thank you.

Best, Scott

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**J. Scott Petersen, P.E.**

Deputy Chief of Staff

Rep. Jim Costa (CA-16)

1314 Longworth House Office Building

Washington, DC 20515

(202) 225-3341

**California is Failing to Protect Water Quality in the San**

## Francisco Bay-Delta

Posted October 29, 2015

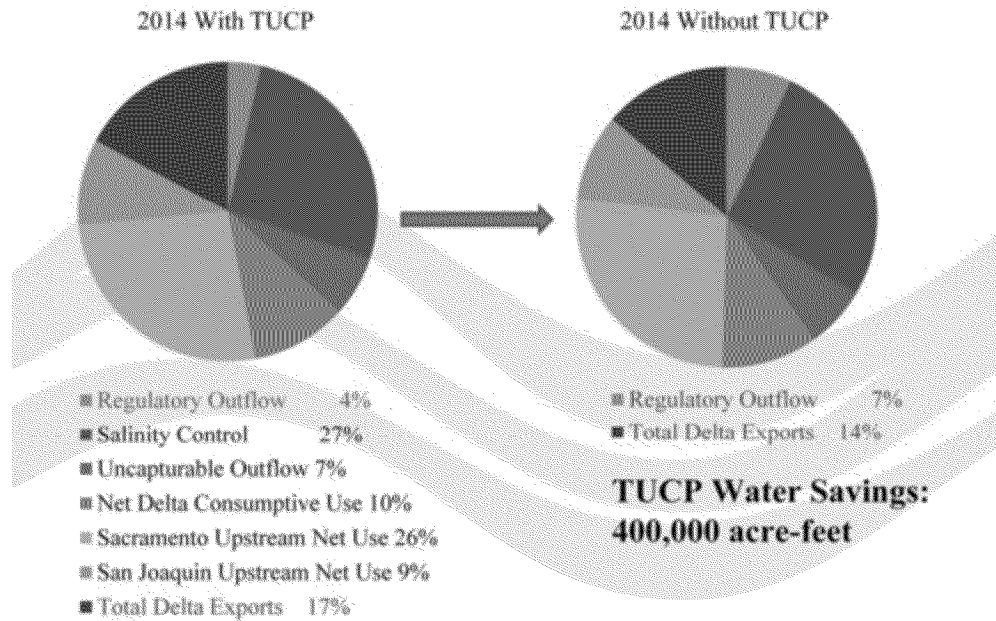
California is not just dragging its feet when it comes to updating and enforcing water quality standards for the beleaguered San Francisco Bay-Delta estuary. Instead, the State appears to be up to its neck in cement, paralyzed in its ability to enforce and update critical water quality standards for the largest and most important estuary on the west coast of the Americas. Despite requirements to update water quality standards every three years, the State has not meaningfully updated the standards for this estuary since 1995, and has not reviewed or updated them at all since 2006. In other words, the same water quality standards that led to the collapse of the Bay-Delta estuary and its fish and wildlife populations are still in place today. That's why a group of national and local conservation groups, including NRDC, Defenders of Wildlife, and The Bay Institute, [sent a letter today](#) asking the U.S. Environmental Protection Agency to take over the job of updating and enforcing safeguards for Bay-Delta water quality.

Nobody seriously questions the vital importance of maintaining water quality in the Delta, which is needed to protect drinking water quality for 25 million Californians, maintain the suitability of Delta water for irrigating more than 3 million acres of farmland, and sustain more than 700 species of fish and wildlife, including the salmon that form the backbone of the salmon fishery along much of the west coast. In fact, [state law](#) passed in 2009 directs the State to "improve water quality to protect human health and the environment consistent with achieving water quality objectives in the Delta" and to "restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem."

It's clear that the existing water quality standards aren't living up to these requirements. The Brown Administration's [Water Action Plan](#) acknowledges that "the status quo in the Delta is unacceptable and it would be irresponsible to wait for further degradation or a natural disaster before taking action." In 2010, the State Water Resources Control Board recognized that the "Delta is in ecological crisis" and that "[t]he best available science suggests that current flows are insufficient to protect public trust resources." In 2008, the Governor's [Delta Vision Task Force](#) acknowledged that, "A revitalized Delta ecosystem will require reduced diversions at critical times," and recommended that the State Water Board adopt new water quality standards by 2012 that increased spring Delta outflows, reintroduced fall outflow variability, and increased San Joaquin River inflows to the Delta in February to June.

Yet, despite these repeated acknowledgements that existing standards aren't protecting water quality, instead of updating and strengthening the standards, the State has instead waived and weakened them further. Since the State adopted the Water Action Plan in January of 2014, it has redirected more than one million acre-feet of water (enough water to supply the City of Los Angeles for about one and a half years) away from protecting Delta water quality to upstream and export water users:

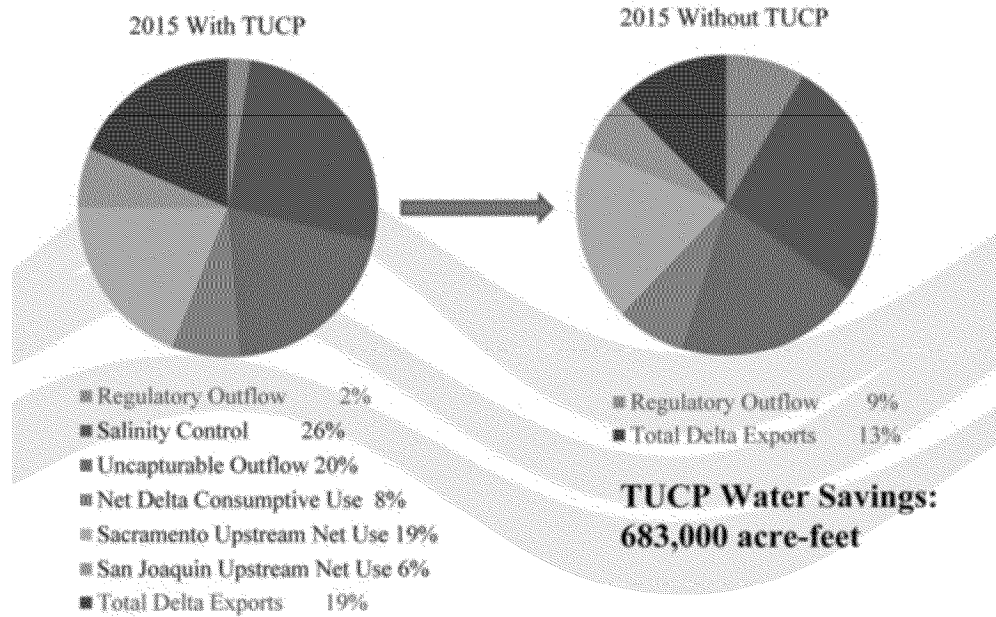
## 2014 Sacramento-San Joaquin Watershed Use (TAF)



May 6, 2014

Slide No. 11

## 2015 Sacramento-San Joaquin Watershed Use (TAF)



May 6, 2014

Slide No. 13

Available

at [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/docs/workshops/swrcb\\_staff\\_pres\\_session11](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/workshops/swrcb_staff_pres_session11)

The State's actions have brought us to the point today where several of the Delta's native species are

nearing extinction - the [delta smelt and winter-run chinook salmon](#), to name just two of the hardest hit - and invasive species and harmful algal blooms are exploding. These impacts [threaten](#) the thousands of jobs that depend on California's 150-year old salmon fishing industry and fishing communities up and down the coast. Toxic algal blooms like *Microcystis* pose a serious risk to drinking water quality and human health in the Delta; these are the type that [shut down](#) the water supply for the city of Toledo, Ohio in 2014, and that have caused the death of at least [three dogs](#) that jumped into northern California's waterways this year. The State predicts that toxic algal blooms will get worse in a climate-changed future if we don't take action now to address the problem.<sup>[1]</sup>

But the State is at least six years behind schedule on completing an update of its water quality standards that is supposed to occur every three years. That's unacceptable and unlawful. What's worse, [the State has delayed](#) - yet again - the update of these standards in order to allow the State's proposal to build two massive new diversion tunnels on the Sacramento River to jump ahead in line. Never mind that it is impossible to determine, as the State Water Board must, how the tunnels would affect fish, wildlife, and other water users over the next several decades without knowing what water quality standards the tunnel operators will have to meet.

It's long past time that California took action to enforce and update water quality standards for the iconic San Francisco Bay-Delta. If the State can't do it, EPA must. Our health, welfare, and environment depend on it.

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<sup>[1]</sup> Bay Delta Conservation Plan [Revised DEIR/Supplemental DEIS](#) at 4.3.21-10 ("Given the combined effects of restoration activities ..., climate change, and sea level rise on increased water residence time, as well as the effects of climate change on Delta water temperatures, it is possible that *Microcystis* blooms in the Delta would increase in frequency, magnitude, and geographic extent, relative to Existing Conditions.")